IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 129 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLABEN WD/O MANUBHAI NAROTTAMBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 129 of 1994

MR NILESH A PANDYA for Petitioner No. 1-3

M/S PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 09/04/2004

ORAL JUDGEMENT

The petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India challenging the legality and validity of the order passed by the Gujarat Revenue Tribunal, Ahmedabad, dated 30th August 1993 in Revision Application No.

TEN.B.A. No. 301 of 1993 and had also prayed for declaration that the petitioners are not holding any land in excess of the ceiling limit as per the provisions of the Gujarat Agricultural Land Ceiling Act, 1960.

2. The petitioner No.1 is the grandmother of petitioner No.3. She was holding 73 acres and 24 gunthas of land situated at Village Bamangam, Taluka-Karjan, District-Vadodara and proceedings were initiated under the provisions of the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as 'the Act'). by the Mamlatdar and ALT, being Ceiling Case No. 293 of 1976. However, before that, an application was given by the petitioner under Section 8(2) of the Act with regard to certain parcel of land for a declaration that the transaction with regard to certain other land was not with a view to defeat the provisions of the Act. It seems that the said application was dismissed on the ground of limitation and on revision application before the Tribunal, the Tribunal by judgment and order dated 23rd June 1980 directed the Deputy Collector to decide and dispose of the application submitted by the petitioner no.1 under Section 8(2) of the Act.

3. That thereafter as stated above the proceedings which were initiated by the Mamlatdar and ALT, Vadodara , vide Ceiling Case No. 293 of 1976 came to be processed and after hearing the petitioner No.1 and considering the documentary evidence on record, the Mamlatdar and ALT, Vadodara , vide order dated 17th February 1986 held that the petitioner No.1 was holding 73 acres and 24 gunthas of land and under the provisions of the Act she was entitled to retain only 36 acres of land and therefore the Mamlatdar & ALT declared 37 acres and 24 gunthas of land as surplus land.

4. Being aggrieved by the aforesaid order dated 17th February 1986 passed by the Mamlatdar & ALT, the petitioner No.1 preferred an appeal before the Deputy Collector, Vadodara being Ceiling Appeal No. 7 of 1986 and the Deputy Collector, Vadodara by his order dated 30th November 1986 dismissed the said appeal and confirmed the order passed by the Mamlatdar & ALT.

5. Being aggrieved by the order dated 30th November 1986 passed by the Deputy Collector, Vadodara, dismissing the same and confirming the order passed by the Mamlatdar & ALT, Vadodara, the petitioner No.1 preferred Revision Application No. TEN.BA. 101 of 1987 before the Gujarat Revenue Tribunal and the Tribunal by judgment and order dated 30th November 1990 allowed the said revision

application remanding the matter to the Mamlatdar and ALT. It seems, that the declaration submitted by son of the petitioner No.1 was already disposed of earlier by giving two units, one of himself and one of the petitioner No.3 herein, i.e.grandson of petitioner No.1 by holding that son of petitioner No.1 is not holding any surplus land and the said fact was not brought to the notice of the Gujarat Revenue Tribunal and therefore the Tribunal observed that nothing is on record to show about holding of son of the petitioner No.1 and therefore remanded the matter to the Mamlatdar and ALT. It is pertinent to note that the case of the son of petitioner No.1 was already disposed of by the Mamlatdar & ALT by order dated 25th August 1980 much before the order of remand came to be passed by the Tribunal.

6. On remand, for the first time, the petitioner No.3 came out with a case along with petitioner No.1 that he is grandson of petitioner No.1. He is also entitled to one additional unit and considering the fact that the unit of petitioner No.3 was already considered while considering the declaration of his father, i.e., son of petitioner No.1 Jugalbbai and Jugalbhai was given one additional unit that of the petitioner No.3 while passing the order dated 25th August 1980, the Mamlatdar passed an order declaring 37 acres and 24 gunthas of land as surplus land by holding that once the unit is already given to the petitioner No.3, while considering the holding of his father Jugalbhai, i.e., son of petitioner No.1, the petitioner No.3 cannot be given further unit, as under the Act he can be given only one unit.

7. Being aggrieved by the judgment and order passed by the Mamlatdar declaring 37 acres and 24 gunthas of land from the holding of petitioner No.1 Kamlaben, the petitioners No. 1 and 3 preferred an appeal before the Deputy Collector, Vadodara , who also by his judgment and order dated 22nd February 1993 dismissed the said appeal by holding that the petitioner No.3 cannot be given any additional unit as grandson of petitioner No.1.

8. Being aggrieved by the aforesaid judgment and order dated 22nd February 1993 passed by the Deputy Collector, the petitioners No. 1 and 3 preferred Revision Application No. TEN.BA.301/1993 before the Gujarat Revenue Tribunal and the Tribunal by order dated 30th August 1993 dismissed the said revision application confirming the orders passed by both the authorities by which 37 acres and 24 gunthas of land came to be declared as surplus land. Being aggrieved and dissatisfied with

all the aforesaid orders passed by the authorities below, the petitioners had preferred the present Special Civil Application under Article 227 of the Constitution of India.

9. It is pertinent to note that so far as the petitioner No.2 is concerned, he was never a party to the proceeding before the lower authorities. Still, he has been joined as petitioner No.2 in the present Special Civil Application.

10. Shri N.A. Pandya, learned advocate appearing for the petitioner has submitted that the petitioner No.3 being the grandson of petitioner No.1 was entitled to one additional unit and therefore all the authorities below have materially erred in not giving one unit to the petitioner No.3. Shri Pandya has also further argued that as such the declaration of the petitioner No.1 was required to be decided with the declaration of the petitioner No.2 and petitioner No.3 jointly as per the judgment and order passed by the Gujarat Revenue Tribunal dated 30th November 1990 in Revision Application No. TEN.BA 101/87, and in not deciding the forms or the declarations of all the persons jointly injustice has been done to the petitioner and therefore requested to quash and set aside all the judgment and orders passed by all the authorities below. He has also further submitted that if there is a major son in the family that son should be treated as an independent person. For that purpose, he has relied upon the judgment of this Court in the case of Sheth Chinubhai Chimanlal Vs. State of Gujarat & Anr., reported in 1982 (1) G.L.R. Page 317.

11. On the other hand, Shri KT Dave, learned AGP appearing on behalf of the respondents, has supported the orders passed by all the authorities below. He has submitted that all the authorities below have concurrently found that the petitioner No.1 is holding 37 acres and 24 gunthas of land as surplus land. He has also further submitted that all the authorities below have concurrently found that the petitioner No.3, grandson of petitioner No.1, is not entitled to any unit in the declaration and holding of the petitioner No.1 and that his unit was already considered while deciding the case and holding of his father, Jugalbhai which came to be concluded in the year 1980 and which has become final and therefore requested to dismiss the Special Civil Application.

12. I have heard the learned advocates appearing for the parties. I have also gone through the judgment and

orders passed by all the authorities below. It seems, that with a view to defeat the provisions of the Act and to see that the land is not declared as a surplus land the petitioner No.1 initially transferred certain parcels of land in favour of petitioner No.3, her grandson and in view of the provisions of Sections 7 and 8 of the Act it was declared that the transaction/transfer in favour of the petitioner No.3 was after the Act came into force and was hit by the provisions of the Act, and therefore the said land was considered to be in the holding of petitioner No.1 ignoring the transfer in favour of petitioner No.3 grandson. Having failed in their efforts, the petitioners No. 1 and 3 had come out with a case before the Mamlatdar and ALT on remand that the petitioner No.3 is also entitled to one additional unit in the holding of the petitioner No.1 as grandson and that considering the fact that the unit of the petitioner No.3 Ajitbhai was already considered while considering the declaration submitted by his father and considering his holding by giving one additional unit that of the petitioner No.3. When the petitioner No.3 was already given one unit while considering the holding of his father Jugalbhai, the petitioner cannot have another unit in the holding of petitioner No.1. The petitioner No.3, as grandson, had no independent holding under the provisions of the Act. Under the provisions of the Act, only one unit is required to be given to holder of the land and when the petitioner No.3's unit was already considered and given while considering the holding of the petitioner No.2, i.e., Jugalbhai, all the authorities below have rightly come to the conclusion that once the petitioner No.3 was already given one unit while considering the holding of father of petitioner No.3 which came to be concluded in the year 1980 the petitioner No.3 cannot be given one additional unit while considering the holding of petitioner No.1 and therefore all the authorities have rightly come to the conclusion that the petitioner No.1 was holding 37 acres and 24 gunthas as surplus land. All the authorities below have concurrently found that the petitioner No.1 is holding 37 acres and 24 gunthas of land as surplus land and the said finding is on the basis of the material and the evidence on record and after considering the fact that the petitioner No.3 is already given one unit while considering the holding of his father, Jugalbhai and therefore the said finding of fact given by all the three authorities below cannot be disturbed by this Court exercising the power under Article 227 of the Constitution of India. There is no material irregularity committed by all the authorities below. The judgment and orders passed by any of the authorities below are passed

after considering the evidence on record and cogent reasons had been given for refusing to give one additional unit of petitioner No.3 in the holding of the petitioner No.1. Once the petitioner No.3 is already given one unit while considering the holding of his father Jugalbai and it was held that the father of the petitioner No.3, i.e. petitioner No.2 herein was not holding any surplus land considering one additional unit that of the petitioner No.3, the petitioner No.3 cannot be given one additional unit in the holding of petitioner No.1. Therefore, even as per this Court also, the petitioner No.3 is not entitled to any additional unit in the holding of petitioner No.1 and therefore, all the authorities have rightly come to the conclusion that the petitioner No.1 is holding 37 acres and 24 gunthas of land as surplus land. There is no illegality and/or irregularity committed by any of the authorities below.

13. Under the circumstances, there is no substance in the present Special Civil Application and the same is dismissed. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

rmr. [M.R. Shah, J.]